



3. Plaintiff, in his Complaint, is demanding judgment against Defendants on grounds of negligence for an amount in excess of \$50,000.00 in accordance with Pennsylvania Rules of Civil Procedure. (See Complaint, Ex. “A.”)

4. There is no service to date.

**Diversity of Citizenship:**

5. Plaintiff, based on information and belief and as alleged in his Complaint, is a citizen of Pennsylvania. (See Complaint, Ex. “A,” ¶¶ 1-2.)

6. Defendant Clarence Waldner resides at 2820 180<sup>th</sup> Avenue, Taunton, MN 56291-180.

7. Defendant Waldner Trucking, incorrectly identified as “Waldner Trucking and Waldner Trucking LLC d/b/a and/or a/k/a Waldner Trucking Company” is a South Dakota corporation with its principal place of business located at 206 E. 4<sup>th</sup> St., Hartford, SD 57033-2219.

8. It is alleged that Co-Defendant John Doe Driver has a place of business and/ or address at 205 N. Eastern, #7, Hartford, SD 57033.

9. In determining whether a civil action is removable on the basis of diversity, the citizenship of defendants sued under fictitious names, like John Doe (1-50) in the within action, shall be disregarded. See 28 USC 1441 (b)(1)

10. Accordingly, because Plaintiff and Defendants are citizens of different states, complete diversity of citizenship exists between the parties in accordance with 28 U.S.C. § 1332, and 28 U.S.C. § 1441.

**Amount in Controversy:**

11. In the Complaint, Plaintiff Carlos Rivera seeks to recover for injuries sustained injuries to his neck, back, spine, head, body and limbs. (See Complaint, Ex. “A,” ¶ 8.)

12. Plaintiff alleges that his injuries are permanent and that he continues to suffer pain. (See Complaint, Ex. “A,” ¶ 9.)

13. Plaintiff alleges he has or may suffer lost income and loss of earning capacity. (See Complaint, Ex. “A,” ¶ 11.)

14. Plaintiff alleges that she has and may incur future medical expenses due to her injuries. (See Complaint, Ex. “A,” ¶ 10.)

15. Plaintiff demands for the imposition of punitive damages. (See Ex. “A,” ad damnum clauses).

16. Plaintiff's allegations of physical injury, coupled with allegations of loss of earnings, mental anguish and permanency make this a claim where a verdict could undoubtedly exceed the \$75,000.00 jurisdictional threshold.

17. A cursory verdict search on Lexis Nexis for premises liability cases with similar injuries resulted in verdicts ranging from \$75,000 through \$265,194 as follows:

- a. *Cameron v. Kamu*; CCP Philadelphia County, allegations of multiple disc pathology, October 30, 2019 verdict of \$75,000;
- b. *Romanick v. Krivorutskaja*; CCP Philadelphia County, allegations of disc pathology, March 25, 2010 verdict of \$200,000; and
- c. *Riley v Harrington*; CCP Philadelphia County, allegations of disc pathology, January 15, 2015 verdict of \$265,194.

(See Pennsylvania case summaries from Lexis Nexis attached hereto and marked collectively as Exhibit “C.”)

18. In accordance with §1332, this case involves (a) injuries, which, as alleged, could exceed \$75,000.00, exclusive of interest and costs; and (b) is between citizens of different states. 28 U.S.C. § 1332(a)(3).

19. Additionally, in accordance with applicable Federal Rules of Civil Procedure and/or Statutes, namely 28 U.S.C.A. §1446(b), this Notice of Removal was filed within thirty (30) days after Defendants received service of Plaintiff's Complaint. See Johnson v. Vertis, Inc., 2002 WL 31388817 (E.D. Pa.)(citing 28 U.S.C. § 1446(b)).

20. Accordingly, pursuant to 28 U.S.C. §1332, this is a civil action that may be removed by Defendants and over which this Court has original jurisdiction.

**WHEREFORE**, Defendants Clarence Waldner and Josh Waldner, d/b/a Waldner Trucking Company, incorrectly identified as Waldner Trucking and Waldner Trucking LLC d/b/a and/or a/k/a Waldner Trucking Company, respectfully request that the aforementioned civil action commenced against it be removed to this Court for all further proceedings.

CIPRIANI & WERNER, P.C.

By: /s/Amy G. Wirth  
Amy G. Wirth, Esquire  
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450 Sentry Parkway, Suite 200  
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Attorney for Defendants, *Clarence Waldner and Josh Waldner, d/b/a Waldner Trucking Company, incorrectly identified as Waldner Trucking and Waldner Trucking LLC d/b/a and/or a/k/a Waldner*

**CERTIFICATE OF SERVICE**

I, Amy G. Wirth, Esquire, hereby certify that a true and correct copy of Defendants, Clarence Waldner and Josh Waldner, d/b/a Waldner Trucking Company, incorrectly identified as Waldner Trucking and Waldner Trucking LLC d/b/a and/or a/k/a Waldner Trucking Company's foregoing Notice of Removal will be served this date as follows:

- a. Electronically by the Court upon all counsel of record who are registered to receive same; or
- b. By First Class Mail, postage pre-paid, in accordance with Pennsylvania and Federal Rules of Civil Procedure, upon the below counsel should they not be electronically served by the Court:

Matthew Breslin, Esquire  
Rodden & Rodden  
125 North 20<sup>th</sup> Street  
Philadelphia, PA 19103

CIPRIANI & WERNER, P.C.

By: /s/Amy G. Wirth  
Amy G. Wirth, Esquire  
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Attorney for Defendants, *Clarence Waldner and  
Josh Waldner, d/b/a Waldner Trucking Company,  
incorrectly identified as Waldner Trucking and  
Waldner Trucking LLC d/b/a and/or a/k/a Waldner*

Date: January 11, 2022